

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MINNESOTA**

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THOMAS SCHIFFLER AND  
BRITTANY SCHIFFLER,

Civil No. 07-4303 (JRT/LIB)

v.  
Plaintiffs,

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

HOME DEPOT USA, INC., JOHN DOE,  
RICHARD ROE, AND XYZ ENTITY,

Defendants,

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Michael Bryant, **BRADSHAW & BRYANT PLLC**, 1505 Division Street,  
Waite Park, MN 56387, for plaintiff.

Dale Thornsjo and Margaret Santos, **O'MEARA LEER WAGNER & KOHL, PA**, 7401 Metro Boulevard, Suite 600, Minneapolis, MN 55439, for  
Defendant Home Depot USA, Inc.

The above-entitled matter came before the Court upon the Report and  
Recommendation of the United States Magistrate Judge Leo I. Brisbois. No objections  
have been filed to that Report and Recommendation in the time period permitted.

Based upon the Report and Recommendation of the Magistrate Judge, and all the  
files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion for Partial Summary Judgment, [Docket No. 60], is  
**GRANTED** as to (1) Plaintiff's claim for defective or inadequate instructions or  
warnings; (2) Plaintiff's manufacturing defect claim; (3) Plaintiff's express warranty

claim; (4) Plaintiff's implied warranty claim, to the extent not merged into the legal doctrine of design defect; and (5) Ms. Schiffler's claim for loss of consortium; each of which Plaintiff and Ms. Schiffler have waived on the record.

2. Defendant's Motion for Partial Summary Judgment, [Docket No. 60], is **GRANTED** as to Plaintiff's head injury claims.

DATED: March 13, 2013  
at Minneapolis, Minnesota

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s/John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge